

REFERENCE TITLE: illegal aliens; employment; verification

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2577

Introduced by
Representatives Pearce, Barnes, Boone, Farnsworth, Smith: Allen J,
Anderson, Biggs, Groe, Nichols, Pierce, Senators Burns, Gould, Harper,
Johnson, Verschoor

AN ACT

AMENDING TITLE 23, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2;
AMENDING SECTION 41-763, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER
23, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2505; AMENDING
SECTION 43-1021, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER
316, SECTION 3 AND CHAPTER 317, SECTION 11; REPEALING SECTION 43-1021,
ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 292, SECTION 2;
RELATING TO THE EMPLOYMENT OF ILLEGAL ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 23, chapter 2, Arizona Revised Statutes, is amended
3 by adding article 2, to read:

4 ARTICLE 2. EMPLOYMENT OF ILLEGAL ALIENS

5 23-221. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "EMPLOYER" MEANS ANY PERSON OR ENTITY THAT EMPLOYS ANOTHER PERSON.
8 EMPLOYER INCLUDES THIS STATE AND ANY POLITICAL SUBDIVISION OF THIS STATE.

9 2. "ILLEGAL ALIEN" MEANS ANY PERSON WHO IS NOT A CITIZEN OR NATIONAL
10 OF THE UNITED STATES AND WHO IS UNLAWFULLY PRESENT OR UNLAWFULLY RESIDING IN
11 THE UNITED STATES.

12 23-222. Verification of employees; civil and criminal immunity

13 NOTWITHSTANDING ANY OTHER STATUTE, AN EMPLOYER WHO VERIFIES THE
14 IMMIGRATION STATUS OF THE EMPLOYER'S EMPLOYEES THROUGH THE SYSTEMATIC ALIEN
15 VERIFICATION FOR ENTITLEMENTS PROGRAM AS ADMINISTERED BY THE UNITED STATES
16 DEPARTMENT OF HOMELAND SECURITY SHALL NOT BE SUBJECT TO ANY CIVIL SANCTION OR
17 CRIMINAL PENALTY IMPOSED BY THIS STATE FOR EMPLOYING AN ILLEGAL ALIEN.

18 23-223. Employees; social security numbers

19 A. AN EMPLOYER SHALL DISCHARGE AN EMPLOYEE IF THE EMPLOYER DISCOVERS
20 THAT THE EMPLOYEE PROVIDED AN INVALID SOCIAL SECURITY NUMBER TO THE EMPLOYER.

21 B. THIS SECTION DOES NOT APPLY IF THE EMPLOYEE PROVES AN ERROR
22 OCCURRED WHEN THE SOCIAL SECURITY NUMBER WAS PROCESSED BY THE EMPLOYER.

23 23-224. Illegal alien discharge; remedy

24 A. AN EMPLOYER SHALL FIRST DISCHARGE ANY ILLEGAL ALIENS WHO ARE
25 EMPLOYED BY THE EMPLOYER BEFORE DISCHARGING AN EMPLOYEE WHO IS LAWFULLY
26 PRESENT IN THIS STATE.

27 B. AN EMPLOYEE WHO IS AGGRIEVED BY REASON OF A VIOLATION OF THIS
28 SECTION MAY FILE AN ACTION IN SUPERIOR COURT WITHIN NINETY DAYS OF THE
29 ALLEGED VIOLATION TO ENFORCE THIS SECTION. THE COURT MAY AWARD A PREVAILING
30 EMPLOYEE APPROPRIATE RELIEF, INCLUDING REHIRING OF THE EMPLOYEE TO THE
31 EMPLOYEE'S FORMER POSITION, ANY LOST WAGES AND REESTABLISHMENT OF ANY
32 EMPLOYEE BENEFITS. THE COURT SHALL AWARD A PREVAILING EMPLOYEE TREBLE
33 DAMAGES, COSTS AND REASONABLE ATTORNEY FEES.

34 23-225. Employment of illegal aliens; revocation of state
35 license, certification, permit or charter;
36 enforcement; definition

37 A. A PERSON WHO HAS A LICENSE, CERTIFICATION, PERMIT OR CHARTER THAT
38 IS ISSUED BY AN AGENCY, DEPARTMENT, BOARD OR COMMISSION OF THIS STATE AND WHO
39 HAS BEEN SANCTIONED AS AN EMPLOYER BY A FEDERAL AGENCY PURSUANT TO THE
40 IMMIGRATION REFORM AND CONTROL ACT OF 1986 OR ANY OTHER FEDERAL STATUTE FOR
41 KNOWINGLY HIRING OR EMPLOYING AN ILLEGAL ALIEN SHALL HAVE THE PERSON'S
42 LICENSE, CERTIFICATION, PERMIT OR CHARTER REVOKED.

43 B. THE ATTORNEY GENERAL SHALL ENFORCE THIS ARTICLE.

44 C. FOR THE PURPOSES OF THIS SECTION, "SANCTION" INCLUDES A FINE, A
45 CIVIL PENALTY OR IMPRISONMENT.

1 Sec. 2. Section 41-763, Arizona Revised Statutes, is amended to read:
2 41-763. Powers and duties of the director relating to personnel

3 The director shall:

4 1. Appoint employees necessary to perform the duties prescribed by
5 this article.

6 2. Have authority for developing and administering a program of
7 personnel administration for the state service in conformance with the
8 personnel rules.

9 3. Have authority to establish such offices as may be necessary to
10 maintain an effective and economical program of personnel administration.

11 4. Have the power to deputize employees in various state agencies
12 where certain of the functions of personnel administration can be performed
13 by such deputies.

14 5. Make an annual report and recommendation to the legislature and the
15 joint legislative budget committee as provided in section 41-763.01.

16 6. Adopt rules relating to personnel and personnel administration.

17 7. Subject to legislative appropriation, have the authority to
18 contract for the services of consultants necessary to perform the annual
19 salary plan and salary plan adjustment recommendations.

20 8. Establish a mandatory program of annual personnel management
21 training for all state employees with supervisory or managerial
22 responsibility that is appropriate to the nature and scope of the employees'
23 supervisory responsibilities. The director may waive the annual mandatory
24 training on a case by case basis. The training shall include at least the
25 following subjects:

26 (a) Basic employee supervisory or managerial skills.

27 (b) Establishing employee objectives and performance measures.

28 (c) Measuring employee performance and the use of performance
29 evaluation methods.

30 (d) Employee discipline training and discipline procedures.

31 (e) Other subjects as determined by the director.

32 9. VERIFY THE IMMIGRATION STATUS OF EVERY STATE EMPLOYEE THROUGH THE
33 SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS PROGRAM AS ADMINISTERED BY THE
34 UNITED STATES DEPARTMENT OF HOMELAND SECURITY.

35 Sec. 3. Title 41, chapter 23, article 1, Arizona Revised Statutes, is
36 amended by adding section 41-2505, to read:

37 41-2505. Awarded contracts; illegal aliens; employee
38 verification; definition

39 A. A PROCUREMENT OFFICER SHALL NOT AWARD A CONTRACT UNDER THIS CHAPTER
40 TO ANY CONTRACTOR OR SUBCONTRACTOR THAT EMPLOYS AN ILLEGAL ALIEN.

41 B. BEFORE A CONTRACT IS AWARDED UNDER THIS CHAPTER, ALL CONTRACTORS
42 AND SUBCONTRACTORS SHALL FIRST VERIFY THE IMMIGRATION STATUS OF THEIR
43 EMPLOYEES THROUGH THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS PROGRAM
44 AS ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY. EACH

1 CONTRACTOR AND SUBCONTRACTOR SHALL PROVIDE A SIGNED AFFIRMATION TO THE
2 PROCUREMENT OFFICER THAT THE REQUIRED VERIFICATION HAS BEEN CONDUCTED.

3 C. FOR THE PURPOSES OF THIS SECTION, "ILLEGAL ALIEN" MEANS ANY PERSON
4 WHO IS NOT A CITIZEN OR NATIONAL OF THE UNITED STATES AND WHO IS UNLAWFULLY
5 PRESENT OR UNLAWFULLY RESIDING IN THE UNITED STATES.

6 Sec. 4. Section 43-1021, Arizona Revised Statutes, as amended by Laws
7 2005, chapter 316, section 3 and chapter 317, section 11, is amended to read:

8 43-1021. Additions to Arizona gross income

9 In computing Arizona adjusted gross income, the following amounts shall
10 be added to Arizona gross income:

11 1. A beneficiary's share of the fiduciary adjustment to the extent
12 that the amount determined by section 43-1333 increases the beneficiary's
13 Arizona gross income.

14 2. An amount equal to the "ordinary income portion" of a lump sum
15 distribution that was excluded from federal adjusted gross income pursuant to
16 section 402(d) of the internal revenue code.

17 3. The amount of interest income received on obligations of any state,
18 territory or possession of the United States, or any political subdivision
19 thereof, located outside the state of Arizona, reduced, for tax years
20 beginning from and after December 31, 1996, by the amount of any interest on
21 indebtedness and other related expenses that were incurred or continued to
22 purchase or carry those obligations and that are not otherwise deducted or
23 subtracted in arriving at Arizona gross income.

24 4. Annuity income received during the taxable year to the extent that
25 the sum of the proceeds received from such annuity in all taxable years prior
26 to and including the current taxable year exceeds the total consideration and
27 premiums paid by the taxpayer. This paragraph applies only to those
28 annuities with respect to which the first payment was received prior to
29 December 31, 1978.

30 5. The excess of a partner's share of partnership taxable income
31 required to be included under chapter 14, article 2 of this title over the
32 income required to be reported under section 702(a)(8) of the internal
33 revenue code.

34 6. The excess of a partner's share of partnership losses determined
35 pursuant to section 702(a)(8) of the internal revenue code over the losses
36 allowable under chapter 14, article 2 of this title.

37 7. The amount by which the adjusted basis of property described in
38 this paragraph and computed pursuant to the internal revenue code exceeds the
39 adjusted basis of such property computed pursuant to this title and the
40 income tax act of 1954, as amended. This paragraph shall apply to all
41 property which is held for the production of income and which is sold or
42 otherwise disposed of during the taxable year, except depreciable property
43 used in a trade or business.

8. The amount of depreciation or amortization of costs of any capital investment that is deducted pursuant to section 167 or 179 of the internal revenue code by a qualified defense contractor with respect to which an election is made to amortize pursuant to section 43-1024.

9. The amount of gain from the sale or other disposition of a capital investment which a qualified defense contractor has elected to amortize pursuant to section 43-1024.

10. Amounts withdrawn from the Arizona state retirement system, the corrections officer retirement plan, the public safety personnel retirement system, the elected officials' retirement plan or a county or city retirement plan by an employee upon termination of employment before retirement to the extent they were deducted in arriving at Arizona taxable income in any year.

11. That portion of the net operating loss included in federal adjusted gross income which has already been taken as a net operating loss for Arizona purposes or which is separately taken as a subtraction under the special net operating loss transition rule.

12. Any nonitemized amount deducted pursuant to section 170 of the internal revenue code representing contributions to an educational institution which denies admission, enrollment or board and room accommodations on the basis of race, color or ethnic background except those institutions primarily established for the education of American Indians.

13. The amount paid as taxes on property in this state with respect to which a credit is claimed under section 43-1078.

14. Amounts withdrawn from a medical savings account by the individual during the taxable year computed pursuant to section 220(f) of the internal revenue code and not included in federal adjusted gross income.

15. Any amount of agricultural water conservation expenses that were deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1084.

16. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1080 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

17. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1080 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1080.

18. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under either section 43-1081 or 43-1081.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

1 19. The amount by which the adjusted basis computed under the internal
2 revenue code with respect to property for which a credit was claimed under
3 section 43-1074.02, 43-1081 or 43-1081.01 and which is sold or otherwise
4 disposed of during the taxable year exceeds the adjusted basis of the
5 property computed under section 43-1074.02, 43-1081 or 43-1081.01, as
6 applicable.

7 20. The deduction referred to in section 1341(a)(4) of the internal
8 revenue code for restoration of a substantial amount held under a claim of
9 right.

10 21. The amount by which a net operating loss carryover or capital loss
11 carryover allowable pursuant to section 1341(b)(5) of the internal revenue
12 code exceeds the net operating loss carryover or capital loss carryover
13 allowable pursuant to section 43-1029, subsection F.

14 22. Any amount deducted pursuant to section 170 of the internal revenue
15 code representing contributions to a school tuition organization or a public
16 school for which a credit is claimed under section 43-1089 or 43-1089.01.

17 23. Any amount deducted in computing Arizona gross income as expenses
18 for installing solar stub outs or electric vehicle recharge outlets in this
19 state with respect to which a credit is claimed pursuant to section 43-1090.

20 24. Any wage expenses deducted pursuant to the internal revenue code
21 for which a credit is claimed under section 43-1087 and representing net
22 increases in qualified employment positions for employment of temporary
23 assistance for needy families recipients.

24 25. Any amount deducted for conveying ownership or development rights
25 of property to an agricultural preservation district under section 48-5702
26 for which a credit is claimed under section 43-1081.02.

27 26. The amount of any depreciation allowance allowed pursuant to
28 section 167(a) of the internal revenue code to the extent not previously
29 added.

30 27. With respect to property for which an expense deduction was taken
31 pursuant to section 179 of the internal revenue code, the amount in excess of
32 twenty-five thousand dollars.

33 28. The amount of any deductions that are claimed in computing federal
34 adjusted gross income representing expenses for which a credit is claimed
35 under section 43-1075.

36 29. THE AMOUNT BY WHICH THE DEPRECIATION OR AMORTIZATION COMPUTED UNDER
37 THE INTERNAL REVENUE CODE WITH RESPECT TO PROPERTY FOR WHICH A CREDIT WAS
38 TAKEN UNDER SECTION 43-1090.01 EXCEEDS THE AMOUNT OF DEPRECIATION OR
39 AMORTIZATION COMPUTED PURSUANT TO THE INTERNAL REVENUE CODE ON THE ARIZONA
40 ADJUSTED BASIS OF THE PROPERTY.

41 30. THE AMOUNT BY WHICH THE ADJUSTED BASIS COMPUTED UNDER THE INTERNAL
42 REVENUE CODE WITH RESPECT TO PROPERTY FOR WHICH A CREDIT WAS CLAIMED UNDER
43 SECTION 43-1090.01 AND WHICH IS SOLD OR OTHERWISE DISPOSED OF DURING THE
44 TAXABLE YEAR EXCEEDS THE ADJUSTED BASIS OF THE PROPERTY COMPUTED UNDER
45 SECTION 43-1090.01.

1 31. THE AMOUNT OF SALARY OR OTHER COMPENSATION THAT IS PAID TO AN
2 ILLEGAL ALIEN AND THAT IS DEDUCTED AS A BUSINESS EXPENSE UNDER SECTION 162 OF
3 THE INTERNAL REVENUE CODE. FOR THE PURPOSES OF THIS PARAGRAPH, "ILLEGAL
4 ALIEN" MEANS ANY PERSON WHO IS NOT A CITIZEN OR NATIONAL OF THE UNITED STATES
5 AND WHO IS UNLAWFULLY PRESENT OR UNLAWFULLY RESIDING IN THE UNITED STATES.

6 Sec. 5. Repeal

7 Section ~~43-1021~~, Arizona Revised Statutes, as amended by Laws 2005,
8 chapter 292, section 2, is repealed.